

STATE OF MICHIGAN
COURT OF APPEALS

TERESA THEODORE,

Plaintiff-Appellant,

v

RAYMOND HORENSTEIN,

Defendant-Appellee.

UNPUBLISHED

May 26, 2009

No. 285153

Oakland Circuit Court

LC No. 2007-083096-NI

Before: Fitzgerald, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) on the basis of a release. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(7) when a claim "is barred because of release" This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff was injured while working as a volunteer at a raceway. She alleges that she was struck by a trailer being pulled by defendant as he was leaving the paddock area of the raceway. Plaintiff signed a comprehensive release that provides, in pertinent part, that she

HEREBY RELEASES, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE the . . . participants . . . FROM ALL LIABILITY TO THE UNDERSIGNED . . . FOR ANY AND ALL LOSS OR DAMAGE, AND ANY CLAIM OR DEMANDS THEREFOR ON ACCOUNT OF INJURY TO THE PERSON OR PROPERTY . . . ARISING OUT OF OR RELATED TO THE EVENT(S), WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.

Plaintiff argues that the term "EVENT(S)" in the release refers only to timed races and, therefore, the release only applies to injuries or claims resulting from an actual auto race, not accidents when a race was not occurring. According to plaintiff, her injury did not arise out of or relate to an actual race. In support of her interpretation of the term "EVENT(S)," plaintiff relies on the following paragraph of the release:

[The undersigned] HEREBY acknowledges that THE ACTIVITIES OF THE EVENT(S) ARE VERY DANGEROUS and involve the risk of serious injury and/or death and/or property damage.

This provision does not support plaintiff's interpretation. The phrase "THE ACTIVITIES OF THE EVENT(S)" recognizes a distinction between "THE ACTIVITIES" and "THE EVENT(S)." Contrary to plaintiff's reading, the provision does not state that the "EVENT(S)" are very dangerous. Rather, only the *activities* are described as very dangerous.

But even if we were to accept plaintiff's interpretation of "EVENT(S)" as referring only to the races, the release would nevertheless bar plaintiff's action. The release applies to injuries "ARISING OUT OF OR RELATED TO THE EVENT(S)" Plaintiff was injured while she was directing defendant out of the paddock area in preparation for the races to resume. Plaintiff's claim, although not directly associated with an actual race, relates to the events at the raceway.

Plaintiff cites several cases from other jurisdictions in support of her argument, but those decisions do not compel a different result. The language in the release is not mentioned in *Johnson v Thruway Speedways, Inc*, 63 AD 2d 204; 407 NYS 2d 81 (1978). In addition, *Sweat v Big Time Auto Racing, Inc*, 117 Cal App 4th 1301; 12 Cal Rptr 3d 678 (2004), *Simpson v Byron Dragway, Inc*, 210 Ill App 3d 639, 647; 569 NE 2d 579 (1991), and *Arnold v Shawano Co Agricultural Society*, 111 Wis 2d 203, 211; 330 NW2d 773 (1983), overruled in part on other grounds by *Green Spring Farms v Kersten*, 136 Wis 2d 304 (1987), all reflect limitations on the enforceability of a release that are not present in Michigan law.

Plaintiff also argues that the release and waiver is not enforceable with respect to defendant because there was no consideration flowing between her and defendant. Plaintiff relies on Restatement Torts, Apportionment of Liability, 3d, § 2, comment k:

Effect of a contractual limitation on liability on defendants not parties to the contract. A contractual limitation on liability bars a plaintiff's recovery only against a defendant who made the contract, who under normal principles of contract law is a third-party beneficiary, or who succeeds in such an interest. The contract does not bar a plaintiff from recovering from other tortfeasors.

However, this Court has recognized that a release may bar a claim against a defendant who did not provide consideration for its signing. See *Rinke v Automotive Moulding Co*, 226 Mich App 432, 438; 573 NW2d 344 (1997), and *Schofield v Spilker*, 37 Mich App 33, 35; 194 NW2d 549 (1971). Further, although the Restatement comment recognizes that a release may bar recovery against an individual who is deemed a third-party beneficiary of the release, plaintiff does not address whether defendant may qualify as a third-party beneficiary of the release.

It is not sufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." [*Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Because plaintiff has not presented a persuasive reason for concluding that the release does not apply, we affirm the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Stephen L. Borrello